

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on March 14, 2001 at 3:15 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Eve Franklin (D)
Sen. Don Hargrove (R)
Sen. Dan Harrington (D)
Sen. Royal Johnson (R)
Sen. Jerry O'Neil (R)
Sen. Emily Stonington (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Jeanne Forrester, Committee Secretary
Susan Fox, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: HB 279; HB 583; SB 466

EXECUTIVE ACTION ON HB 279

Motion: SEN. ROYAL JOHNSON moved that HB 279 BE AMENDED
EXHIBIT (phs58a01) HB027901.asf.

Discussion:

Ms. Fox explained the amendments.

Vote: Motion that **HB 279 BE AMENDED** carried 10-0.

Motion: **SEN. DUANE GRIMES** moved **TO STRIKE "A BILL OF RIGHTS" ON PAGE 10 OF HB 279 AND INSERT "STANDARDS OF CARE"**.

SEN. EVE FRANKLIN said "a bill of rights" and "standards of care" are two different things. She suggested that both concepts be in the bill.

SEN. GRIMES said his motion was to strike one and add the other.

Vote: Motion **carried** 9-0.

Ms. Fox will revise the amendments to include the new amendment **EXHIBIT** (phs58a02) **HB027902.asf**.

Motion/Vote: **SEN. JOHNSON** moved that **HB 279 BE CONCURRED IN AS AMENDED**. Motion **carried** 10-0.

SEN. GRIMES wanted to make clear the intent of the committee regarding drug therapy management. He wanted to make sure drug therapy management would not be more than that prescribed by the physician.

SEN. VICKI COCCHIARELLA will carry this bill on the floor.

EXECUTIVE ACTION ON HB 583

SEN. CHRISTIAENS moved **HB 583** be concurred in.

Discussion:

SEN. GRIMES said he was concerned about the cause of action on page two.

SEN. CHRISTIAENS said there are amendments to cover that **EXHIBIT** (phs58a03) **HB0583.01asf**.

Ms. Fox said these amendments had been forwarded to **Dr. Donald Harr**, **Dr. Ginny Hill**, **Ms. Anita Roessman** and **Mr. Ed Amberg**.

SEN. GRIMES said we almost need a gray bill, since these amendments almost rewrite the entire bill. He asked if there

was any compelling reason we need to "do pass" this bill at the last meeting we are having.

SEN. EMILY STONINGTON said she had some questions about the difference between being competent or incapacitated. She said she also had some concerns about the cause of action.

SEN. GRIMES said he was concerned about the litigiousness of the entire circumstance. For example, regarding the cause of action, who should be notified, who should not be allowed to visit the individual, and the duration of the directive.

SEN. CHRISTIAENS said we should keep in mind, **REP. ESP's** original intent was - "the person is safe". **SEN. CHRISTIAENS** said he had visited with **Bob Olsen**, from the Hospital Association, who said any time you have a pre-directive, it is revokable.

SEN. GRIMES said on page two, line three it says, "the advanced directive may deal with subjects in addition to those provided in this section." **SEN. CHRISTIAENS** said he was reading too much into it.

SEN. STONINGTON said it says the advanced directive is valid and enforceable only for those provisions included in the directive.

SEN. FRANKLIN said **Dr. Hill** deals with some of the toughest patients in the state and this could put her (Dr. Hill) in a very restrictive position.

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Motion: **SEN. STONINGTON** moved that **HB 583 BE AMENDED, Exhibit 3, SBO58301.asf.**

Ms. Fox explained the amendments.

SEN. GRIMES said he believed the amendments needed to be segregated into groups, because there are some changes he would like to make.

SEN. GRIMES said this will take quite a bit of time and he wants to convince himself that this bill is necessary. He said he is aware that **REP. ESP** is very close to a personal family problem.

SEN. GRIMES said this is one case, and he is not sure there is that much of a problem in the mental health community.

Anita Roessman, Montana Advocacy Program said, unfortunately, for a lot of consumers this bill is irrelevant, because many of the

people with mental illness have lost the connection with their family, and very often there is no one they want to have contact with. Also, an advanced directive bill faces an uphill struggle, because there are not the mechanisms for distribution. She did say for some people who are always in the same community, and end up in the same hospital, an advance directive would be useful to the local hospital.

SEN. FRANKLIN said there is nothing in this bill that allows the hospital to give out any information about the persons' treatment. This bill is only addressing notification.

Bob Olsen, Montana Hospital Association said there are advanced directives for the terminally ill. He said the language in this bill enables the attending physician to decide if the patient is capable of making decisions. However, if the family member of the patient does not agree with the physician, there could be grounds for cause of action. He said we have now allowed a third party to enter into the equation, this is different from the advanced directives for the terminally ill.

SEN. BISHOP asked who determines if the patient is of sound mind.

SEN. CHRISTIAENS said if you look at the first amendment **Exhibit 3**, it strikes that language.

SEN. GRIMES said in order to make something work, he would like to strike the entire Subsection 5, on page 2. However, he did feel by doing that, it could take the teeth out of the bill.

SEN. O'NEIL said we should add that if the health care provider acts pursuant to one of these directives, they cannot be sued for so acting.

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SEN. GRIMES said he still found it hard to believe we need this bill. He did say he realized we may need it because of the privacy laws in the Uniform Health Care Information Act.

Ms. Roessman said the Uniform Health Care Information Act has only been adopted in two states.

Substitute Motion: **SEN. CHRISTIAENS** moved **TO SEGREGATE AMENDMENTS 1,2 , AND 3 FROM THE AMENDMENTS TO HD 583.**

SEN. JOHNSON said this bill is very complicated and he felt he really did not understand this bill.

SEN. GRIMES asked if it would be too late to appoint a subcommittee.

SEN. HARGROVE said we should not throw away this bill, because it is too important.

SEN. CHRISTIAENS withdrew his substitute motion.

SEN. STONINGTON withdrew her motion.

SEN. BISHOP appointed a subcommittee - **SEN. GRIMES AS CHAIRMAN**, **SEN. FRANKLIN**, and **SEN. O'NEIL**.

SEN. GRIMES said the subcommittee will meet on Monday, March 19, 2001.

EXECUTIVE ACTION ON SB 466

Motion: **SEN. CHRISTIAENS** moved that **SB 466 BE AMENDED EXHIBIT (phs58a04) SB046601.asf**.

Discussion:

Ms. Fox explained the amendments and passed out a copy of the present law, 53-21-126, **EXHIBIT (phs58a05)**, which has to do with amendment 19.

SEN. FRANKLIN said a professional person and a mental health professional person are not the same thing. **Ms. Fox** said a mental health professional person can be added if the committee so desires.

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Vote: Motion that **SB 466 BE AMENDED** carried 10-0.

SEN. CHRISTIAENS Moved **SB 466 AS AMENDED**.

SEN. FRANKLIN expressed concern about New Section 2, page 1; a person could be classified as a non-compliant person if you were hospitalized one time in your life.

SEN. GRIMES said he has an amendment **EXHIBIT (phs58a06) SB046602.asf** and he explained his amendment.

SEN. FRANKLIN said we have to allow the process to take place by which some people will recognize they have an illness. We cannot have a person hospitalized one time and have them categorized as a non-compliant person.

Motion: **SEN. GRIMES** moved that **SB 466 BE AMENDED SB046602.asf.**

Ms. Fox said there are two other places in the bill, that refer back to Section 53-21-126, which has to do with non-compliance. She also said the logic of intent of assisted out-patient treatment, is to keep people on track for treatment.

SEN. GRIMES said as far as he is concerned, he would not want to replace the other two references in the bill. He felt they would keep the bill consistent.

Ms. Roessman said she thought the amendment **SEN. GRIMES** had proposed was an improvement.

Vote: Motion that **SB 466 BE AMENDED, SB046602.asf, carried 8-0.**

SEN. FRANKLIN said she had a verbal amendment - to New Section 2. She would like to insert:

a) the respondent has experienced two prior civil commitments.

b) that for at least one recent extended period the respondent failed to follow a reasonable treatment plan. She said that would make it "three strikes and you're out (or in)".

Motion/Vote: **SEN. FRANKLIN** moved **HER VERBAL AMENDMENT TO SB 466.**
Motion carried 8-0.

Motion/Vote: **SEN. CHRISTIAENS** moved that **SB 466 DO PASS AS AMENDED.** Motion carried 8-2 with DePratu and Grimes voting no. **SEN. STONINGTON** voted by proxy.

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ADJOURNMENT

Adjournment: 4:55 P.M.

SEN. AL BISHOP, Chairman

JEANNE FORRESTER, Secretary

AB/JF

EXHIBIT (phs58aad)